

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

PROGRESSIVE DIRECT INSURANCE COMPANY d/b/a
PROGRESSIVE NORTHERN INSURANCE COMPANY,

Plaintiff,

v.

MESHA L. GERKEN,

Defendant,

and,

MESHA L. GERKEN,

Counter-Plaintiff,

v.

PROGRESSIVE DIRECT INSURANCE COMPANY d/b/a
PROGRESSIVE NORTHERN INSURANCE COMPANY,

Counter-Defendant,

and,

MESHA GERKEN, BRENDAN STARKEY
and HEATHER STARKEY,

Third-Party Plaintiffs,

v.

DOMENIC CHARLES MILES and
PROGRESSIVE DIRECT INSURANCE COMPANY,
d/b/a PROGRESSIVE NORTHERN INSURANCE
COMPANY,

Third-Party Defendants.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1441(b) and 1446(b)(3), Third-Party Defendant, DOMENIC CHARLES MILES, by and through his undersigned counsel, DEGRAAUW LAW FIRM, P.C. (J. Andrew deGraauw and Bryan M. Rowland, appearing), give Notice of Removal to this Court of the civil action filed in the Second Judicial District Court for the State of New Mexico, County of Bernalillo, Cause No. D-202-CV-2018-03651, by Third-Party Plaintiffs, MESHA GERKEN, BRENDAN STARKEY and HEATHER STARKEY and as grounds therefore state:

1. On July 7, 2019, Third-Party Plaintiffs, MESHA GERKEN, BRENDAN STARKEY and HEATHER STARKEY filed a Verified Answer to First Amended Complaint, Amended Counter-Complaint and Third-Party Complaint that did not articulate a basis for removal. A copy of the Verified Answer to First Amended Complaint, Amended Counter-Complaint and Third-Party Complaint is attached hereto as Exhibit A.

2. Third-Party Defendant DOMENIC CHARLES MILES was served on or about September 18, 2019, with the Third-Party Complaint that did not articulate a basis for removal. See Summons attached hereto as Exhibit B.

3. This Notice of Removal is timely as it was filed within thirty (30) days of “. . . receipt by the defendant, through service or otherwise, of a copy of an . . . other paper from which it may first be ascertained that the case is one which is or has become removable” and because “. . . the case stated by the initial pleading [wa]s not removable,” when, on August 19, 2019, Third-Party Plaintiffs contends service was perfected as to this Third-Party Defendant and/or also on August 19, 2019, when counsel for Third-Party Plaintiffs first notified counsel for this Third-Party Defendant via email that the amount (sought) in controversy exceeds \$75,000.00 (by refusing to respond when directly asked if the amount in controversy (including sought

punitive damages, attorney's fees, subrogation damages and treble damages related to allegations of fraud) exceed \$75,000.00), pursuant to 28 U.S.C. § 1446(b)(3).

4. The Third-Party Defendant, by and through his undersigned counsel, consent to the removal of this action.

5. Pursuant to 28 U.S.C. § 1446(d), copies of the Notice of Removal will be promptly given to all adverse parties and a copy of the Notice of Removal will be filed with the Clerk of the Second Judicial District Court, County of Bernalillo, State of New Mexico.

6. The claims stated against Third-Party Defendant are subject to the original jurisdiction of this Court pursuant to 28 U.S.C. §§ 1332(a) and 1446(c), as the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States; Third-Party Defendant resides in Portland Oregon and Third-Party Plaintiffs reside in New Mexico.

7. Pursuant to Rule 81.1(a) of the Local Rules of the United States District Court for the District of New Mexico, Defendant will file a Notice of Filing of State Court Record and certified copies of the pleadings filed in the Second District Court for the State of New Mexico, County of Bernalillo, Cause No. D-202-CV-2018-03651, within thirty (30) days of filing this Notice of Removal. A Civil Cover Sheet is attached as Exhibit C.

Respectfully submitted,

DEGRAAUW LAW FIRM, P.C.

By: /s/ **Bryan M. Rowland**

J. Andrew deGraauw
Bryan M. Rowland
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CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2019, I filed the foregoing pleading electronically through the CM/ECF, which caused all parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

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/s/ **Bryan M. Rowland**
J. Andrew deGraauw
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